

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

In the matter of)	
LISTO, INC., a Nevada corporation)	DOCKET NO. S-03585A-05-0000
668 N. 44 th St., Suite 233)	
Phoenix, Arizona 85008)	DECISION NO. <u>68460</u>
ROBERT SMART and JANE DOE)	
SMART,)	ORDER TO CEASE AND DESIST, ORDER
husband and wife)	TO DISGORGE COMMISSIONS AND
#819 Donato Guerra Rep. Belice Col.)	ORDER FOR ADMINISTRATIVE
Machi-Lopez)	PENALTIES AND CONSENT TO SAME
Hermosillo, Senora, Mexico 83127)	RE: KEVIN KRAUSE
KEVIN KRAUSE, an unmarried man)	
23444 N. 21 st Way)	
Phoenix, Arizona 85024)	
Respondents.)	

16 Respondent KEVIN KRAUSE elects to permanently waive any right to a hearing and
17 appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*
18 (“Securities Act”) with respect to this Order To Cease And Desist, Order to Disgorge
19 Commissions, and Order of Administrative Penalties and Consent to Same (“Order”). Respondent
20 admits the jurisdiction of the Arizona Corporation Commission (“Commission”); neither admits
21 nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to
22 the entry of this Order by the Commission.

23 **I.**

24 **FINDINGS OF FACT**

25 1. LISTO is a Nevada corporation organized on January 14, 2002 (“LISTO”)
26 subsequently merged with GBO, Inc., a Nevada corporation, with the surviving entity retaining the

1 name of LISTO, effective July 15, 2003, all times relevant, the principal place of business of LISTO
2 was 668 N. 44th Street, Suite 233, Phoenix, Arizona 85008; however, LISTO has never been
3 authorized to transact business in Arizona.

4 2. ROBERT SMART (“SMART”) was at all relevant times a principal of LISTO whose
5 last known residential address is 36640 N. Sidewinder Rd., Carefree, Arizona 85377 and last known
6 business address is #819 Donato Guerra Rep. Belice Col. Machi-Lopez, Hermosillo, Sonora, Mexico
7 83127.

8 3. SMART holds himself out to be the president of LISTO and is the majority stock
9 holder and control person of LISTO.

10 4. KEVIN H. KRAUSE (“Respondent”), an unmarried man, was at all relevant times an
11 agent of LISTO whose last known address is 23444 N. 24th Way, Phoenix, Arizona 85024.

12 5. From approximately early 2003 through the fall of 2004, Respondent offered
13 securities in the form of common stock in LISTO.

14 6. Respondent represented to investors that LISTO was seeking capital for the
15 development of oil and gas wells in the Holbrook area of Northeastern, Arizona (the “Energy
16 Project”). The Respondent claimed that the Energy Project was to be advanced through the use of
17 land leases between LISTO and the Arizona Land Department. That claim is false. There are no
18 land leases between LISTO and the Arizona Land Department.

19 7. Respondent failed to explain to offerees and/or investors the risk and costs involved
20 in the Energy Project.

21 8. Respondent also represented to investors that LISTO was seeking capital for the
22 development of a new community located in the Puerto Penasco (i.e., Rocky Point) district of
23 Mexico, which development plan was to include condominiums, a resort style hotel, medical
24 facilities, marina, casino, and airport, referred to as “Ciudad de La Blanca Rosa at Los Almejas” (the
25 “Mexico Project”). The Respondent informed investors that the site of the Mexico Project was to
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1 be located in an area of Rocky Point known as “Sandy Beach,” but later told investors that the site
2 was to be on a larger parcel of property located further south in the Rocky Point district.

3 9. Respondent told investors that the Mexico Project had commenced as of the time of
4 the offering; however, its development has not progressed past the initial planning stage.

5 10. Respondent told investors that profits received from the Energy Project would also
6 be used to fund the Mexico Project.

7 11. Respondent induced the public to invest in LISTO through detailed presentations
8 about the Mexico Project and/or the Energy Project through local seminars, advertisements in the
9 *Arizona Republic*, and an internet website located at <http://www.listoinc.com>.

10 12. Respondent failed to disclose to investors that common stock in LISTO was issued
11 to certain individuals without payment to the corporation or that it was sold at varying purchase
12 prices per share, thereby diluting the value of the stock.

13 13. Respondent failed to inform investors that funds raised would be used to pay for
14 the personal expenses of SMART. Upon information and belief, SMART used investor funds
15 for the payment of personal expenses including, but not limited to, housing, living, and
16 entertainment expenses.

17 14. Respondent failed to inform investors that he was to receive, and did in fact
18 receive, a commission for the sale of common stock in LISTO.

19 15. Respondent raised at least \$549,000.00 from the sale of common stock in LISTO for
20 which Respondent earned at least \$63,950.00 in commissions. The majority of investors are
21 residents of Arizona.

22 16. The common stock in LISTO is not registered as securities in Arizona nor is it
23 exempt from registration.

24 17. Respondent is not registered as a securities dealer or salesman in Arizona, nor is
25 Respondent exempt from registration.
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II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondent offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. Respondent violated A.R.S. § 44-1991 by making untrue statements or misleading omissions of material facts.

6. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. Respondent's conduct is grounds for an order of disgorgement pursuant to A.R.S. § 44-2032.

8. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

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III.**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act. Respondent shall not sell any securities in or from Arizona without being registered in Arizona as a dealer or salesman, or exempt from such registration. Respondent shall not sell securities in or from Arizona unless the securities are registered in Arizona or exempt from registration.

IT IS FURTHER ORDERED that Respondent comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent shall disgorge all sales commissions earned in connection with Respondent's sales activities in this matter; as reflected in the records of the Commission, such disgorgement shall be in the amount of \$63,950.00, plus interest at the rate of 10% per annum from the date of this Order. Payment shall be made in monthly installments in the amount of \$250.00 per month on or before the 1st day of each and every month, beginning on the first day of the month immediately following the date of this Order, until paid in full. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. All payments required under this Order shall be made by check or money order payable to the "State of Arizona" and will be placed in an interest-bearing account maintained and controlled by the Commission. The Commission shall disburse the funds on a pro rata basis to investors shown on the records of the Commission. Any funds that the Commission determines it is or cannot feasibly unable to disburse shall be transferred to the general fund of the state of Arizona. If Respondent does not comply with this

1 order of restitution, any outstanding balance shall be in default and shall be immediately due and
2 payable.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent shall pay
4 administrative penalties in the amount of \$10,000.00. The payment obligation for the
5 administrative penalties shall be subordinate to any disgorgement obligations ordered herein and
6 shall become immediately due and payable only after disgorgement payments have been paid in
7 full, or if Respondent has defaulted prior to fulfilling Respondent's restitution obligations. For the
8 purposes of this Order, a bankruptcy filing by Respondent shall be an act of default on
9 Respondent's disgorgement obligation. If Respondent does not comply with this order for
10 administrative penalties, any outstanding balance may be deemed in default and shall be
11 immediately due and payable.

12 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
13 Commission may bring further legal proceedings against that Respondent, including application to
14 the superior court for an order of contempt.

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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

/s/ Jeffrey Hatch-Miller
CHAIRMAN

/s/ William A. Mundell
COMMISSIONER

/s/ Marc Spitzer
COMMISSIONER

/s/ Lowell Gleason
COMMISSIONER

/s/ Kristin K. Mayes
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
Executive Director of the Arizona Corporation
Commission, have hereunto set my hand and caused the
official seal of the Commission to be affixed at the
Capitol, in the City of Phoenix, this 2nd day of
February, 2006.

/s/ Brian C. McNeil
BRIAN C. McNEIL
Executive Director

DISSENT

DISSENT

This document is available in alternative formats by contacting Linda Hogan, Executive Assistant
to the Executive Director, phone number (602) 542-3931, E-mail LHogan@cc.state.az.us.

(JC)

CONSENT TO ENTRY OF ORDER

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2 1. Respondent Kevin Krause (“Respondent”) admits the jurisdiction of the
3 Commission over the subject matter of this proceeding. Respondent acknowledges that he has
4 been fully advised of its right to a hearing to present evidence and call witnesses and Respondent
5 knowingly and voluntarily waives any and all rights to a hearing before the Commission and all
6 other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
7 Administrative Code. Respondent acknowledges that this ORDER TO CEASE AND DESIST,
8 ORDER TO DISGORGE COMMISSIONS, AND ORDER FOR ADMINISTRATIVE
9 PENALTIES AND CONSENT TO SAME (“Order”) constitutes a valid final order of the
10 Commission.

11 2. Respondent knowingly and voluntarily waives any right under Article 12 of the
12 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
13 resulting from the entry of this Order.

14 3. Respondent acknowledges and agrees that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. Respondent acknowledges that he has been represented by an attorney in this
17 matter, he has reviewed this Order with his attorney and understands all terms it contains.

18 5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law
19 contained in this Order. Respondent agrees that he shall not contest their validity in any present or
20 future administrative proceeding before the Commission or any other state agency concerning the
21 denial or issuance of any license or registration required by the State to engage in the practice of
22 any business or profession.

23 6. By consenting to the entry of this Order, Respondent agrees not to take any action
24 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
25 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
26 factual basis.

1 7. Respondent will undertake steps necessary to assure that all of its agents and
2 employees understand and comply with this agreement.

3 8. While this Order settles this administrative matter between Respondent and the
4 Commission, Respondent understands that this Order does not preclude the Commission from
5 instituting other administrative proceedings based on violations that are not addressed by this
6 Order.

7 9. Respondent understands that this Order does not preclude the Commission from
8 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
9 that may be related to the matters addressed by this Order.

10 10. Respondent understands that this Order does not preclude any other agency or
11 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
12 proceedings that may be related to matters addressed by this Order.

13 11. Respondent agrees that he will not apply to the state of Arizona for registration as a
14 securities dealer or salesman or for licensure as an investment adviser or investment adviser
15 representative until such time as all disgorgement, interest and penalties under this Order are paid
16 in full.

17 12. Respondent agrees that he will not exercise any control over any entity that offers
18 or sells securities or provides investment advisory services within or from Arizona until such time
19 as all disgorgement, interest, penalties under this Order are paid in full.

20 14. Respondent agrees that he will not sell any securities in or from Arizona without
21 being properly registered in Arizona as a dealer or salesman, or exempt from such registration; he
22 will not sell any securities in or from Arizona unless the securities are registered in Arizona or
23 exempt from registration; and he will not transact business in Arizona as an investment adviser or
24 an investment adviser representative unless properly licensed in Arizona or exempt from licensure.
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1 15. Respondent acknowledges and understands that if he fails to comply with the
2 provisions of the order and this consent, the Commission may bring further legal proceedings
3 against him, including application to the superior court for an order of contempt.

4 16. Respondent agrees that until disgorgement, interest and penalties are paid in full,
5 Respondent shall notify the Director of the Securities Division within 30 days of any change in
6 business address and any change in Respondent's ability to pay amounts due under this Order.
7 Respondent agrees that he shall provide the Commission with an updated financial statement every
8 year from entry of this Order or when any change in its ability to pay amounts due under this
9 Order occurs. Respondent agrees that failure to perform any action in this paragraph shall result in
10 him being in default with any outstanding balance being immediately due and payable without
11 notice or demand.

12 17. Respondent understands that default shall render him liable to the Commission for
13 its costs of collection and interest at the maximum legal rate.

14 18. Respondent agrees and understands that if he fails to make any payment as required
15 in the Order, any outstanding balance shall be in default and shall be immediately due and payable
16 without notice or demand. Respondent agrees and understands that acceptance of any partial or
17 late payment by the Commission is not a waiver of default by the Commission.

18 19. Respondent agrees that he will continue to cooperate with the Securities Division
19 including, but not limited to, providing complete and accurate testimony at any hearing in this
20 matter and cooperating with the state of Arizona in any related investigation or any other matters
21 arising from the activities described in this Order.

22 21. Respondent consents to the entry of this Order and agrees to be fully bound by its
23 terms and conditions.

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/s/ Kevin Krause
Kevin Krause

SUBSCRIBED AND SWORN TO BEFORE me this 5th day of January,
2006.

/s/ Crisinta I. McDonald
NOTARY PUBLIC

My Commission Expires:
May 14, 2009